

REMARKS

This reply is in response to the Office Action mailed on May 24, 2007. On page 2 of the Office Action, the Examiner rejected claims 1-3, 8-10, 13-16, and 27-41 under 35 U.S.C. § 102(e) as being anticipated by Fehling et al., U.S. Patent No. 6,770,094. Applicant respectfully traverses the rejection based upon the reasons set forth below.

Independent claim 1 recites “at least one appendage removably attached to the first or second base ... wherein the stabilizing element may be removed from the cage through an opening created by removing at least one of the appendages.” Independent claim 27 recites “a retaining means for removably retaining the stabilizing means” and a “removably attached appendage.” Independent claim 30 recites “one or more appendages removably coupled to the scaffold assembly ... wherein the one or more appendages may be removed to provide an opening into or out of which the stabilizing element may be inserted or extracted.” Independent claim 33 recites “at least two appendages removably coupled to the scaffold assembly ... wherein the stabilizing element may be removed from the cage through an opening created by removing at least one of the appendages.” Independent claim 38 recites “at least one removably attached appendage ... wherein the stabilizing elements may be removed from the scaffold assembly through an opening created by removing at least one of the appendages.”

Each of the independent claims set forth above includes one or more appendages (see, e.g., specification paragraph [0044]) that are removable in order to permit the removal of the stabilizing element. Fehling et al. does not identically disclose such a removable appendage or removal of a stabilizing element. Fehling et al. discloses a “protective coating” to “prevent tissue from growing into the intervertebral disc prosthesis” and “compression spring 16,” “stack of disk springs 18,” “spiral spring 20,” or “leaf springs 22” that are “inserted between the discs 10 and 12.” Col. 3, lines 1-5, 14, and 22; col. 4, lines 1-2. Fehling et al. does not appear to disclose the removability of either the protective coating or the springs. More specifically, the protective coating of Fehling et al. is “wound up,” “sealed,” and “mounted,” on the discs, providing no suggestion or indication of removability of either the coatings or the springs housed between the

discs. Col. 4, lines 9-11. Accordingly, independent claims 1, 27, 30, 33, and 38 (and their corresponding dependent claims) are not anticipated under 35 U.S.C. § 102(e) by Fehling et al. and are presented for reconsideration and allowance.

Method claims 15, 16, 31, 32, 36, 37, and 39-41 are not anticipated by Fehling et al. for the reasons set forth above and also for the reasons that follow. Each method claim recites “removing a first stabilizing element” and “inserting a second stabilizing element.” Fehling et al. discloses only that the internal springs are “enclosed by a protective coating” and does not disclose removal of a first stabilizing element and insertion of a second stabilizing element. Accordingly, for these additional reasons, method claims 15, 16, 31, 32, 36, 37, and 39-41 are not anticipated under 35. U.S.C. § 102(e) by Fehling et al. and are presented for reconsideration and allowance.

Claims 1-3, 8-16, and 27-41 are pending in the present application. Claims 11 and 12 are withdrawn. Applicant believes that the present application is in condition for allowance. Favorable reconsideration of the application is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application

Respectfully submitted,

Date July 20, 2007

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